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DAN SMOOT

FORTAS SHOULD BE PROSECUTED

In September and October, 1966, criminal indictments were brought against Louis E. Wolfson and several of his associates. Wolfson — a friend, client, and benefactor of Supreme Court Justice Abe Fortas — had been dropping Fortas's name in strategic places in his effort to obviate criminal prosecution for stock manipulations. In June, 1966, Justice Fortas had given the Wolfson Family Foundation notice that he intended to resign his lucrative job with the Foundation at the end of the year; but Fortas still retained a \$20,000 fee he had accepted in January, 1966 — intending to keep it as compensation for his services during 1966.

In mid-October, 1966, however, Congress and the public learned that Justice William O. Douglas was (and had been for four years) on a \$12,000-a-year retainer as president of the Albert Parvin Foundation which was financed by gambling interests in Las Vegas. Though Justice Douglas contemptuously refused to sever his connection with the Parvin Foundation, and Chief Justice Earl Warren saw no impropriety in Douglas's behavior, Congress and the public were indignant. A clamor for Douglas to resign from the Supreme Court arose, and did not subside until the end of the year. During that period — on December 22, 1966 — Justice Abe Fortas quietly refunded the \$20,000 fee he had accepted from the Wolfson Foundation 11 months before. Senator John Williams (Delaware Republican) believes it was the furore over Justice Douglas's acceptance of big fees from the questionable Parvin Foundation that prompted Justice Fortas to refund his big fee from the questionable Wolfson Foundation.

At any rate, when Louis E. Wolfson was first indicted (September, 1966), Justice Fortas was still on the payroll of the Wolfson Foundation.

Government attorneys handling the Wolfson cases were concerned about Fortas's possible intervention for Wolfson. They reported their concern to Ramsey Clark, President Johnson's Attorney General, telling him that Justice Fortas had accepted a large fee from the Wolfson Family Foundation.⁽¹⁾

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Clark did nothing.

Many months passed before Wolfson and cohorts were brought to trial.

Meanwhile, Justice Fortas's former law firm and Mrs. Fortas were involved in another extraordinary affair.

In 1967, Irwin Fruchtman (head of the Donovan Steel and Wire Company of Toledo, Ohio) was under investigation by the Federal Trade Commission in a racketeering case. A federal grand jury investigated Fruchtman, and indicted him for obstructing justice. Abe Fortas's former law firm represented him in the FTC case and during the grand jury proceedings.

When he was brought to trial following indictment, Fruchtman was represented by another firm of lawyers. During the trial, the Department of Justice subpoenaed a number of Donovan Steel's sales invoices. Some were produced, but others were not: they were said to be lost. Fruchtman was, however, convicted.

On August 26, 1968, burglars broke into the offices of Fortas's former law firm in Washington. They opened and ransacked Mrs. Abe Fortas's safe, stole \$22,160 worth of jewelry, and left scattered on the floor other contents from the safe — among them, 28 of the sales invoices which the Department of Justice had subpoenaed in 1967 but which had never been produced because they were said to be lost.⁽²⁾

This discovery was reported to the Department of Justice. Fred M. Vinson, Jr., Assistant Attorney General in charge of the criminal division under President Johnson, made an investigation, found no wrong-doing, and quietly closed the matter.

When the Nixon administration came in, Will Wilson replaced Vinson. Career attorneys in the Department told Wilson about the Fruchtman case and the missing invoices found in Mrs. Fortas's law office. After the Fortas scandal had broken, Attorney General John Mitchell ordered a grand jury investigation in Toledo, Ohio, to determine whether members of Mrs. Fortas's law firm or others should be indicted for perjury,

withholding evidence, and obstructing justice. That investigation is now going on.⁽³⁾

When the Wolfson cases finally went to trial, Alexander Rittmaster (involved with Wolfson as a co-defendant) pleaded guilty, and testified against Wolfson. In his testimony, Rittmaster said Wolfson had continuously tried to calm his associates by promising that "if he had to, he would go as far as Capitol Hill to see that nothing happened," and that, at most, the defendants "would receive only a slap on the wrist."

Wolfson was convicted in two stock-fraud cases (the Merritt-Chapman case and the Continental Enterprises case). He was fined \$100,000 and sentenced to serve a year in prison. He appealed, but lost in circuit court. He appealed to the Supreme Court which — on April 1, 1969, with Justice Fortas taking no part — refused to hear the case.

Wolfson was also convicted and sentenced to serve 18 months in a perjury and obstruction-of-justice case. That conviction is still on appeal.⁽⁴⁾

Just before Louis E. Wolfson was finally committed to prison on the stock-fraud convictions (April 25, 1969), he was interviewed by *The Wall Street Journal*, which reported:

"Wolfson said he could have obtained a pardon from former President Johnson relieving him of the sentence. He didn't say who had offered the pardon, but asserted the offer came 'from somebody who is as close as anybody could be' to Mr. Johnson."

As early as September, 1968, Republican leaders (including those close to Nixon) knew of the improper relationship between Abe Fortas and Louis E. Wolfson. They did nothing about the scandal, however, except to warn Republican Senator Jacob Javits against closely identifying himself, during his campaign, with Fortas. Javits, an old friend of Fortas, and a supporter of Johnson's efforts to promote Fortas to Chief Justice, was running for reelection in 1968.

Nixon's Secretary of State, William P. Rogers, acknowledges that he was aware, early in the 1968

campaign, that Fortas was involved with Wolfson. He says he did not at the time consider the involvement "very insidious," and that he, too, was then in favor of promoting Fortas to Chief Justice.

It is interesting to note that a member of Secretary Rogers's law firm represented Alexander Rittmaster (who was indicted and convicted along with Louis E. Wolfson) at the same time that Justice Fortas's law firm was representing Wolfson.⁽⁵⁾

The Fortas scandal broke on May 4, 1969 (when the May 5, 1969, issue of *Life*, containing the Fortas-Wolfson expose, reached newsstands). Fortas immediately released to the press a written statement making a general denial of the allegations against him.

On May 5, 1969, Nixon's Justice Department subpoenaed documents from one of Wolfson's attorneys in Washington and from the Wolfson Family Foundation in Jacksonville, Florida.⁽⁶⁾ FBI Agents interviewed Wolfson in prison.

President Nixon met with Republican congressional leaders and urged them not to give any "encouragement . . . aid and comfort" to Members of Congress who were talking about impeaching Justice Fortas. The Republican leaders agreed to make a deal with Chief Justice Earl Warren: the Justice Department would show Warren the incriminating information it had on Fortas; if Warren could get Fortas to resign from the Court, Fortas could protect the image of the Court by publicly asserting that, though he was guilty of no wrong-doing, he was stepping down to shield the Court from harassment; the Nixon administration would promise that no further action would be taken, that damaging information about Fortas would be kept concealed, and that "unfavorable action or comment in Congress" would be discouraged.⁽⁷⁾

Apparently, that Nixon-Warren deal was made. Fortas resigned on May 14. The Department of Justice file on him was sealed; and President Nixon and his congressional leaders have refrained from further comment on the affair, although several outraged Members of Congress (both Republican and Democrat) demand that full inves-

tigation and disclosure be made, and prosecution initiated if indicated by the facts.

The facts do indicate that Abe Fortas should be prosecuted. Fortas's two formal statements about the Wolfson affair — his May 4 press release, and his May 14 resignation letter — make a seamy web of dishonest evasions and outright lies.

In the May 4 press release, Fortas said:

"Since I became a member of the Court. . . . I have not accepted any fee or emolument from Mr. Wolfson or the Wolfson Family Foundation or any related group. . . .

"In 1966, in the hope that I would find time and could undertake, consistently with my Court obligations, research functions, studies and writings connected with the work of the foundation, the Wolfson Family Foundation tendered a fee to me.

"Concluding that I could not undertake the assignment, I returned the fee with my thanks. . . ."

Ten days later, he admitted the facts that the FBI had obtained: he did accept and keep for 11 months a \$20,000 fee, which the Wolfson Foundation had sent him as the first annual payment of a lifetime retainer.

In his May 4 press release, Fortas said:

"At no time have I given Mr. Wolfson or any of his family, associates, foundations, or interests *any legal advice or services*, since becoming a member of the Court."

In his May 14 letter of resignation, Fortas said:

"In December, 1966, I returned to the Foundation . . . the sum of Twenty Thousand Dollars previously paid to me. I concluded that, because of the developments which had taken place, *the services which I had performed* should be treated as a contribution to the Foundation. . . ."

Here is one of the most ludicrous passages in Fortas's letter of resignation:

"Since I became a member of the Court, Mr. Wolfson on occasion would send me material

relating to his problems . . . and on several occasions he mentioned them to me, but I have not interceded or taken part in any legal, administrative or judicial matter affecting Mr. Wolfson or anyone associated with him. . . .”

What do you suppose Fortas did when his friend and benefactor would mention his legal problems, seeking the advice that Fortas denies he ever gave? Stare silently into space?

When interviewed in prison by FBI Agents, Louis Wolfson (according to *Life*, May 19, 1969) stated that Justice Fortas *had* counseled him about his criminal cases, advising Wolfson that the charges “were based on legal technicalities.”

If this Wolfson statement is true (as Fortas’s own resignation letter seem to indicate it is), then Abe Fortas, while a member of the Supreme Court, was acting as a lawyer (practicing law), representing a client (Wolfson) in dealing with a government agency (the SEC).

A federal law makes it a felony for a federal official to represent a client in dealing with the government. Another law makes it a misdemeanor for a federal judge to practice law.⁽⁸⁾

Apparently, Abe Fortas violated both these laws — and perhaps the laws against bribery, as well.

The *Washington Evening Star* of May 12, 1969, reported that the Justice Department apparently had enough evidence for a major prosecution of Fortas.

On May 15, 1969, U.S. Representative H. R. Gross, demanding that the Justice Department impanel a federal grand jury “to make a sweeping investigation of Fortas’s activities,” said:

“I am advised that there is documentary and other evidence showing that Mr. Fortas made contact with Government officials in connection with the Wolfson criminal investigation, and made an effort to intervene in the case. . . . The reports of the arrangement for a \$20,000-a-year fee from the Wolfson Family Foundation for the period of Fortas’s life and for the life of Mrs. Carolyn Agger Fortas, is inconsistent

with the purported reason for receiving the fee. Only the naive would believe that a fee of this size, on a lifetime arrangement, would be paid for giving advice and doing research on how to dispense money to create harmonious relations on civil rights and religious matters.

“This was a ‘fix,’ and it makes no difference what else it is called by Mr. Fortas. There are criminal laws that cover this type of operation, and I hope they will be enforced without fear or favor for the former Associate Justice.”⁽⁹⁾

The public should support Mr. Gross’s demand, because Abe Fortas should be prosecuted.

Justice William O. Douglas should be impeached, removed from the Supreme Court, and then prosecuted, for doing precisely what Fortas did—as we shall see in a later issue of this *Report*.

FOOTNOTES

- (1) *Human Events*, May 24, 1969, p. 3
- (2) *Washington Evening Star*, May 7, 1969, p. A4
- (3) Sources for the “Fruchtman case” material: *The Dallas Morning News*, May 7, 1969, p. A3; *The Miami Herald*, May 8, 1969, p. A9; *Washington Evening Star*, May 7, 1969, p. A4
- (4) *The Dallas Morning News*, May 16, 1969, p. A6
- (5) *The New York Times*, May 23, 1969, pp. 1, 26
- (6) *The Dallas Morning News*, May 19, 1969, p. A4
- (7) *Newsweek*, May 19, 1969, p. 30
- (8) *The Dallas Morning News*, May 19, 1969, p. 1
- (9) *Congressional Record* (daily), May 15, 1969

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